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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/560,067 04/27/00 MATTSON

B MAT-P-99-002

EXAMINER

TM02/1030

PATENTS+TMS
A PROFESSIONAL CORPORATION
THIRD FLOOR
1914 N MILWAUKEE AVENUE
CHICAGO IL 60647

O CONNOR, G

ART UNIT

PAPER NUMBER

2167

DATE MAILED:

10/30/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/560,067

Applicant(s)
Mattson

Examiner
O'Connor

Art Unit
2167



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on August 27, 2001 (Amendment "A")
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above, claim(s) 1-8 and 15-20 is/are withdrawn from consideration
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-14 and 21-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on April 27, 2000 is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) ☐ Other:

Art Unit: 2167

DETAILED ACTION

Preliminary Remarks

1. This Office action has been prepared in response to the amendment and arguments filed by applicant on August 27, 2001 (Paper N^o 8), in response to the prior Office action.
2. The amendment of claims 9-14 and addition of claims 21-29 are hereby acknowledged.

Election/Restriction

3. Claims 1-8 and 15-20 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a non-elected invention. Election was made **without** traverse in Paper N^o 6.

Drawings

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the receiving and storing of the information, the website, the posting of information on the website, and accessing the information via a computer, as well as the computer, the destination remote from the restaurant, the wireless device, the cellular telephone, and the personal digital assistant, must all be shown or the feature(s) cancelled from the claim(s). No new matter should be entered.

Art Unit: 2167

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 9-14 and 21-29 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by CyberDiner Internet Cafe Systems, the posting of restaurant reviews at appropriate websites by patrons of the restaurant being an inherent use of the Internet, as demonstrated by the Blue Ginger webpage at the Boston Globe website.

Response to Arguments

7. Applicant's arguments filed August 27, 2001 have been fully considered but they are not persuasive.

8. Regarding the argument that the drawings need not show every feature of the invention specified in the claims, the drawings must indeed show every feature of the invention specified in the claims, as explicitly required by 37 CFR 1.83(a).

9. Regarding applicant's argument that the claims are not anticipated by the *CyberDiner Internet Café Systems* reference because that single reference does not explicitly disclose each

Art Unit: 2167

and every element of applicant's claimed invention, the rejection that was made (and has now been made final) under 35 U.S.C. 102(b) addressed the fact that certain elements of the claims were not explicitly disclosed by *CyberDiner*, by explaining that those elements were inherent in *CyberDiner*, hence necessarily present.

“To serve as an anticipation when the reference is silent about the asserted inherent characteristic, such gap in the reference may be filled with recourse to extrinsic evidence. Such evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.”

Continental Can Co. USA v. Monsanto Co., 948 F.2d 1264, 1268, 20 USPQ2d 1746, 1749 (Fed. Cir. 1991).

CyberDiner discloses a restaurant that provides Internet access to each of its patrons at each of the tables when patrons are served. The access provided by *CyberDiner* is general Internet access to all websites of the Internet. Connection to--hence, ability to use--all such websites is therefore inherently present in the restaurant system of *CyberDiner*, including connection to and use of such restaurant review websites as the Blue Ginger review at the Boston Globe website, boston.com. See MPEP § 2131.01(III)

Art Unit: 2167

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to the disclosure.

11. Applicant's amendment necessitated any new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication, or earlier communications, should be directed to the examiner, Jerry O'Connor, whose telephone number is (703) 305-1525.

GJOC



October 26, 2001

 10/29/01
ROBERT P. OLSZEWSKI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600-2100